185.

SUPREME COURT OF THE UNITED STATES.

No. 190.

THE UNITED STATES, APPELLANTS,

v.

VICENTE CANE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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Transcript of the proceedings in Case No. 123, Vicente Cane, Claimant, *v.* The United States, Defendant, for the place named "San Bernardo."

Office of the Board of Commissioners to ascertain and settle the private land claims in the State of California.

Be it remembered, that on this twenty-third day of March, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board, in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Vicente Cane, for the place named "San Bernardo," was presented, and ordered to be filed and docketed with No. 123, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, September 2d, 1852.

In case No. 123, Vicente Cane for the place named "San Bernardo," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 4 of this transcript.)

Los Angeles, October 8th, 1852.

In the same case, the deposition of Wm. R. Hutton, a witness in behalf of the claimant, taken before Commissioner James Wilson, was filed.

(Vide page 5 of this transcript.)

San Francisco, Dec. 31st, 1852.

In the same case, the deposition of Jose Maria Covarrubias, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 6 of this transcript.)

San Francisco, August 12th, 1853.

Case No. 123 called. The counsel read the evidence; argued, submitted, and taken under advisement.

San Francisco, Nov. 22d, 1853.

In the same case, Commissioner Alpheus Felch delivered the Opinion of the Board confirming the claim.

(Vide page 30 of this transcript.)

Petition.

To the Honorable Commissioners to settle Private Land Claims in California.

The petitioner, Vicente Cane, respectfully shows, that on the first day of December, A. D. 1839, he applied, through the Prefect of the First District of California, for the tract of land known by the name of San Bernardo, situate in the then Partido of San Luis Obispo, and being from a league to a league and a half square; that said application was approved by the Prefect and other legal authorities; that on the 11th day of February, A. D. 1840, Juan B. Alvarado, Governor of California, by virtue of authority in him vested, granted to the petitioner the said tract of land, with the boundaries described in the said grant, and set forth in the respective map; that on the 19th day of May, A. D. 1840, the Departmental Junta of California approved the said grant in due form, all of which is shown in the Expediente, an exact copy of which is submitted herewith, marked "A," with a translation marked "B," as also a copy of the title and map given him, marked "C," with a translation marked "D."

And the petitioner further shows, that on the 27th day of December A. D. 1845, the said tract of land was duly surveyed, and the juridical possession of it given to the petitioner by the proper authority; a copy of which juridical act is submitted herewith, marked "E," with a translation marked "F."

That the said land has not been surveyed by the Surveyor-General of the United States, but that it was surveyed by the proper authority at the time of giving the juridical possession, and has been surveyed since by the Surveyor of the County of San Luis Obispo, and that its boundaries are definite and well known.

That the petitioner, for some thirteen years, has been and now is in the quiet, peaceful, and undisputed possession, occupation, and cultivation of the said tract of land.

That he knows of no conflicting claim.

The petitioner relies for confirmation of title upon the original papers, copies of which are submitted herewith; upon the documents and minutes in the archives now under the charge of the Surveyor-General; and upon such other and further proofs as he may be advised are necessary.

Whereupon he prays the Commissioners to confirm to him the said tract of land.

By his attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office, March 23d, 1852.

(Signed) GEO. FISHER,
Secretary.

Deposition of Pablo de la Guerra.

Office of the Board of Commissioners of California Land Claims.

Los Angeles, September 2d, 1852.

On this day, before Hiland Hall, one of the Commissioners to ascertain and settle the Private Land Claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant, Vicente Cane, whose petition is No. 123 on the docket of the Board, and was duly sworn. His evidence was interpreted by the Secretary, it being given in Spanish.

The law agent was notified and attended.

In answer to questions put by the Counsel for the Claimant, the witness testified as follows:

My name is Pablo de la Guerra; my age thirty-two, and I reside at Santa Barbara; I am a native of California.

I am acquainted with the handwriting and signatures of Juan B. Alvarado, Manuel Jimeno, Joaquin Estrada, Julian Estrada, and Mariano Pacheco.

The signatures of these several persons appearing upon a paper now shown me, purporting to be the title-papers, map, and judicial possession to the claimant of the Rancho San Bernardo, I have no doubt are their genuine signatures. The said paper is hereunto annexed and marked No. 1. The claimant has been living on the land and occupying it, as I have understood, for several years, say five or six years.

PABLO DE LA GUERRA.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office, Sept. 2d, 1852.

GEO. FISHER,
Secretary.

Deposition of Wm. R. Hutton.

No. 123.

Office of the U. S. Land Commissioners,
Los Angeles, Oct. 8th, 1852.

On this day, before James Wilson, one of the Commissioners for ascertaining and settling private land claims in California, came Wm. R. Hutton, a witness produced on behalf of the claimant, Vicente Cane, whose petition is No. 123 on the Docket of the Board, and was duly sworn, his evidence being given in English.

The Law Agent, by R. Greenhow, Esq., was present, and did not object.

1st Quest. What is your name, age, and place of residence?

Answ. My name is William R. Hutton, my age is 26 years, and I have resided in California since April, 1847.

2d Quest. Say what you know about occupation of the Rancho of San Bernardo, claimed by Vicente Canet.

Answ. I have known the Rancho of San Bernardo since 1849, at which time it was occupied by the claimant. It is situated in the County of San Luis Obispo. In 1851, as County Surveyor of that County, I surveyed it for the claimant. He had a house on it, and about twelve or fifteen hundred head of cattle and horses, and cultivated about one hundred acres.

WM. R. HUTTON.

Oct. 8, 1852.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

Filed in office, Oct. 8th, 1852.

GEO. FISHER,
Secretary.

Deposition of Jose Maria Covarrubias.

San Francisco, Dec. 31st, 1852.

On this day, before Commissioner Hiland Hall, came Jose Maria Covarrubias, a witness in behalf of the claimant, Vicente Cane, petition No. 123, and was duly sworn, his evidence being interpreted by the Secretary.

The U. S. Law Agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Jose Maria Covarrubias; my age is 44 years; I reside in Santa Barbara, and have lived in California 18 years.

I know the Rancho called San Bernardo, claimed by Vicente Canet; it is situated in the County of San Luis Obispo; Canet has occupied it since 1840 with a house, cattle, and horses, and cultivating a considerable portion of the land; he still lives upon it with his family.

JOSE MA. COVARRUBIAS.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office, Dec. 31st, 1852.

GEO. FISHER,
Secretary.

[1 S. D. K.] 1839.

Espediente promovïdo por Vicente Cane en pertenecion del terreno que espresa 192.

[2 S. D. K.] Sello tercero. Dos Reales.

Habilitado por la administracion de la Aduana Maritima del

pueste de Monterey de la Alta California para los anos de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

GUTIERRES.
ANGEL RAMIREZ.

Balga para los anos de 1839 y 1840.

ALVARADO.
ANTONIO MA. PICO.

Sn. Juan de Castro, Diciembr. 3, de 1839, informe el administrador de S. Luis Obispo sobre lo que respecto al establicimento de su cluyo.

CASTRO.

[3 S. D. K.] Con arreglo al dicreto del Sor. Prefecto pa. que el admina. de este establecmto. informe si sepusde das el terreno qe. en la adjunta instancia solicite Digo qe. el mismo dia de la fha vecina a los alcaldes y de mas neofitos a quienes impuse del terreno qe. solicita el Sor. Cane y todos unanime conbunen en que se le de pues tiene los requisitos qe. espresa en su solicitud. En dho terreno en el supuista que se consida jamas podra evitar que el ganado alsudo qe. pastea en el, se impeda qe. se corra a se aya uso de el, que courenga a la Mission.

Sor Prefecto del 1a. Distrito.

Vicente Cane, naturalizado en lu Republica Mejicana casado con hija del pais y vecino de este puebla ante la justificacion de V. S. pansco y digo que siendo diceno de un numero de cien cabesas de ganado mayor, de tiescentor de ganado lunar y treinta cabesas de caballao, curesco de un terreno lu que formentar estos bienes de cuyo producto necesito para la subsistencia de mi creceda familia que hi procurado indagao un terreno propio a mi intento que sobiesto mi sea consedido por el Gobierno, este terreno es de un sitio de ganado mayor poco mas o menos y esta situado a una distancia de cinco liguas de la Mission de San Luis Obispo entre tierras de Mastra Olvera, arrego de S. Ginsito la Sierra Madre y el Estero. Portanto muy respetuosamento suplica de serva proveer en justicia qe. imploro bajo las protestas de estito.

SN. JUAN DE CASTRO.

Diciembre 1a, de 1839.

No sabe firmar.

[4 S. D. K.] Sello Tercero. Dos Reales.

Habilitada por la administracion de la Aduana Maritima del Puerto de Monterey de la Alta California para los anos de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

GUTIERREZ,
ANGEL RAMEREZ.

Balga para los anos de 1839 y 1840.

ALVARADO,
ANTONIO MA. OSIO.

Luis Obispo, Enero 15, de 1840.

[SEAL.] JUAN P. AGALA.

Sn. Juan de Castro, Enero 26, de 1840.

Con el informe de esta Prefectura dioese al Exmo Sor. Gobernador del Departmo.

CASTRO.

Exmo Sor. Gobernador.

La Prefectura se ha impuesto de la solicitud que hase Vicente Cane en pretension del terreno qe. cita como tambrea del informe admin. de San Luis Obispo, y no encuentra dificultad ninguna en que el Gobierno concida al enteresado la propriedad de decho terreno maxime cuando el establiemto. a que pretenesea no lo necesita y la parte suplicante es acreedora por sus servicios a la benevolencia de V. E.

[5 S. D. K.]

JOSE CASTRO.

Sn. Juan de Castro, Enero 27, de 1840.

[6 S. D. K.]

Monterey, Enero 11, de 1840.

Vista la peticion con que du principio este expediente el informe del Sor. Prefecto.

Y el del Admin. de la Mision de San Luis Obispo y todo lo demas que se trevo presente y ver convenio de conformidad con las leyes y reglamentos. de la materon declaro a Dn. Vicente Cane dueno en propriedad ad terreno que se halle colindante con el Rancho del Cno. Martin Olvra con la Sierra Madre con los terrenos conocidos pertenecer al parage conocido con el nombre de San Luicito y el mar estendiendon el correspondiente despacho y entriquesete al interesado bajo las condiciones que se estipularea el Sor. Dn. Juan B. Alvarado, Gobor. Constitutional del Departamento de las Californias, ase lo mando decreto y firmo de que doy fee.

ALVARADO.

[7 S. D. K.]

Monterey, 12 de Mayo, de 1840.

Dada cuenta a la E. Junta Departamental acordo en sesion de este dia qe. pase a la Comiscion de Agricultura.

JOSE Z. TERADADO,
Srio.

En deiz y nueve del mismo lo desolbio la Comision con el dictamen que se acompana.

FERNANDO.

Monterey, 12 de Junio, de 1840.

En vista de la aprobacion ortogada en Diez y nueve del mes po. po.

pr. la E. Junta Departmental, librese testimonio de ella a la parte de D. Vicente Cane en conformacion del terreno que pretendio y obtavo en once de Febrero del presente Ano El Sr. Dn. Juan B. Alvarado, Gobernador Constitucional del Departamente de las Californias asi lo provey oy firmo de que doy fee.

[8 S. D. K.] ALVARADO.

(For map, see original, between pages 10 and 11.)

Exmo Sor:

[9 S. D. K.] La comision de agricultura encargada de dictaminar sobre la consecion hecha en la persona del Cuidno. Vicente Cane del terreno consedido p. el Exmo. Sor. Gobernador D. Juan B. Alvarado con fha 11 de Febrero del presente ano, en ista de los actuales informas y demas que ver seha podido, poni a la deliberacion de V. E. los articulos siguantes Aorto. 1o. se aprueba la consecion hecha pr. el Exmo. Sor. Gobernador D. Juan B. Alvarado en los terminos que se espresa el titulo en fha 11 de Febrero del presente ano en la persona de Vicente Cane 2o. El Goberrno Departamenta! tendra a bien mandar espidar copia de esta superior aprovacion asiendo se le dereja al interesado pa. su satisfacion y conociniento,

[10 S. D. K.] Monterey, Mayo 16, de 1840. Jose Rafael Gonzalez, Monterey, 19 de Mayo, de 1840. En sesion de este dia aprobo la Exmo. Junta Departamental el dictamen anterior reformando su 2o. Artiento en los luminos siguiente, Arto. 2o. que el presente espediente vuelva al Exmo. Sor. Gobernador para los finis que corresponda.

MANL. JIMENO,
Preste.

JOSE. Z. FERNANDEZ,
Srio.

[11 S. D. K.] Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias por cuanto Don Vicente Cane ha pretendido para su beneficio personal y el de su familia el parage que sta entre las tierras del Vecino Martin Olviera, Arroyo de San Luisito, la Sierra Madre el Eltoros practicadas previamente las diligencias y averiguaciones concernientes segun lo despuesto por leyes y reglamentos; usando de las facultades que me son conferidas a nombre de la nacion Mejicana, he venido en concederle se terreno mencionado declarandole la propriedad de el por las presentes letras.

Sugetandose a la aprobacion de la Exma. Junta Departamental y las condiciones segmentes 1a. Podra cercarlo sin prejudicar las travisias caminos y servidumbres lo disfrutara libro y esclusivamte destinandolo el uso ocultuo que mas le comoda piro dentro de un ano fabricara casa y estasa habitada, 2e. solicitarar del Jues respectivo que le de posesion juridica en virtud de esto despacho por el cual se demarcaran los lindiros en cuyos limites pondra a mas de las mojo-

[12 S. D. K.] nuas algunos arboles frutales o salvestres de alguna utilidad 3d el terreno de que se hace donacion es de un sitio de ganado mayor poco mas o menos segun esplica el deseno que corre en el espediente. El juis que diese la posecion lo hara medir conforme a Ordenanza quidundo el sobrante que resulta a la nacion pura los usos convenientes 4a. se contravinese a estos condiciones pudera a su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose por firme y valadero este titulo se toma razon de el en el libro a que corresponde y se entrique al enteresado para su resguardo y de mas finis, dudo en Monterey a once de Febrero de mil ochocientos cuarenta.

Office of the Surveyor-General of the United States for California.

I, Samuel D. King, Surveyor-General of the United States for the State of California, and as such now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the twelve preceding and herewith pages of tracing paper, numbered from *from* one to twelve inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents or part of the said archives in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name officially, and affixed my private seal, not having a seal of office, at the City of San Francisco, Cal., this twenty-fourth day of February, 1852.

SAML. D. KING,
Sur.-Gen. Cal.

Filed in office, March 23, 1852.

GEO. FISHER,
Secretary.

Translation of Espediente.

Stamp third, two reales, authorized by the administration of the Maritime Custom-house of the port of Monterey, in Alta California, for the years 1836 and 1837.

(Signed) GUTIERREZ.
(Signed) ANGEL RAMEREZ.

Good for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO MARIA OSIO.

San Juan de Ca stro, December 3d, 1839.

The administrator of San Luis Obispo will report on so much as respects the establishment under his charge.

(Signed) CASTRO.

In accordance with the decree of the Prefect, that the administrator

of this establishment, report whether the land asked for in this petition can be granted, say that on the day of this date, I called together the Alcaldes and other Mofitos of this establishment, to whom I informed of the land asked for by Senr. Cane, and they all unanimously agreed that it be given, since he had the requisites set forth in his petition upon said land, on the supposition that it be granted to him, he ought never to prevent the cattle which are accustomed to pasture there, from running there or making use of it, as it may be convenient to the Mission.

(Signed) JUAN P. AYALA.

San Luis Obispo, January 15th, 1840.

To the Prefect of the 1st District: Vicente Cane, naturalized in the Republic of Mexico, married to a woman of the County, and a resident of this Pueblo, before the justification of your honor, appears and says, that being owner of a hundred of cattle, three hundred sheep, and thirty head of horses, he desires a piece of land in which to grow this property, the produce of which is required for the subsistence of his large family; that he has found a piece of land suited for his purpose, which he requests the government to grant to him. This land is a about league square, a little more or less, and is situated at the distance of five leagues from the Mission of San Luis Obispo, between the lands of Martin Olivera, the Arroyo of San Luisito, the Sierra Madre, and the Estiro.

Whereupon he very respectfully prays your Excellency to be pleased to grant in justice what he petitions for in due form.

The petitioner cannot sign.

San Juan de Castro, December 1st, 1839.

San Juan de Castro, January 26, 1840.

With the report of this Prefectura this is sent up to his Excellency the Governor of the Department.

(Signed) CASTRO.

To his Excellency the Governor.

The prefectura has considered the petition of Vicente Cane in application for the land referred to, as also the report of the administrator of San Luis Obispo, and find no difficulty in the government's granting to the party interested the ownership of said land, especially as the establishment to which it pertains does not need it, and as the petitioner is deserving by his services of the benevolence of your Excellency.

(Signed) JOSE CASTRO.

San Juan de Castro, January 27th, 1840.

Monterey, February 11th, 1840.

Having seen the petition at the beginning of this expediente, the report of the Prefect and the administrator of the Mission of San

Luis Obispo, and all other informations relating to the matter, I declare Don Vicente Cane owner in fee of the land which is bordering on the Rancho of Citizen Martin Olivera, in the Sierra Madre, on the lands pertaining to the place known by the name of San Luisito, and on the sea. Let the corresponding title be made out and delivered to the party interested, under the stipulated condition. Senr. Don Juan B. Alvarado, Constitutional Governor of the Department of the Californias, thus ordered, decreed and signed, of which I certify.

(Signed) ALVARADO.

Monterey, May 12th, 1840.

Submitted to the Most Excellent Departmental Junta, considered in session to-day, and passed to the Committee on Agriculture.

(Signed) JOSE T. FERNANDEZ,
Secretary.

On the 19th of the same month, the committee returned the Expediente with the accompanying report.

(Signed) FERNANDEZ.

Monterey, June 12th, 1840.

In view of the approval, passed on the 19th of the last past month, by the Most Excellent Departmental Junta, let a certificate of it be issued to the party, Don Vicente Cane, in confirmation of the land to which he pretended and obtained on the 11th day of February of the present year. Senor Don Juan B. Alvarado, Constitutional Governor of the Department of Californias, thus approved and signed, of which I certify.

(Signed) ALVARADO.

Excellent Sir:

The Committee on Agriculture, charged with the consideration of the grant made to the person of Citizen Vicente Cane of the land, made by his Excellency the Governor, Don Juan B. Alvarado, on the 11th day of February of the present year, having examined the reports, and whatever else was submitted to them, submits to the deliberation of your honorable body the following articles:

Article 1st. They approve the grant made by his Excellency the Governor, Don Juan B. Alvarado, in the terms expressed in the title, date February 11th of the present year, to Vicente Cane.

Article 2d. The Departmental Government will be pleased to order a copy of this superior approbation to be sent to the party interested for his satisfaction and information.

(Signed) JOSE RAFAEL GONZALEZ.

Monterey, May 16th, 1840.

Monterey, May 19th, 1840.

In session this day, the Most Excellent Departmental Junta

approved the foregoing report, amending the 2d Article in the following manner:

Article 2d. That the present Expediente be returned to his Excellency the Governor for the ends corresponding.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ,
Secretary.

(Here follows a copy of title, the same as translated in Exhibit D.)

Filed in office, March 23d, 1852.

GEO. FISHER,
Secretary.

Sello 1o. Seis Pesos.

Habilitado provisionalmte. por la Aduana Maretima de Monterey pa. los anos 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

[SEAL.] Juan B. Alvarado, Gobernador Constitucional del deparmto. de las Californias. Por cuanto Dn. Vicente Cane ha pretendido para su beneficio personal y el de su familia, el terreno que se halla colindante con el Rancho del Cno. Martin Olivera, con las tierras conocides putenocentes a San Luisito con la tierra y el mar practicados previamente las diligencias y averiguaciones concernientes sequa lo despuesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mejicana declarandole la propriedad de el por las presentes letras sugetandose a la aprovacion de la Exma. Punta Departamental y las condiciones seguientes, 1a Podra sercarlo sin prejudicas las travesias caminos y servidumbres: lo disputara libre y esclusivamente destinandolo al uso a cultivo que mas le comode, pero dentro de un ano fabricara casa y estar a habitada. 2a solecetara del Juez respectivo que le de posecion juridica en virtud de este despacho por el cual s demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad. 3d. El terreno de que se hace mencion es de un sitio de ganado mayor poco mas o menos sequa explica el diceno que com en el espediente el Jues que diesie, la possesion lo hara medier conforme a Ordenanza quedando el sobrante a la nacion para sus usos convenientes. 4a. Se contraveniese a estas condiciones perdera a su derecho al terreno y sera denunciable por otro. En consequencia mando que teniendose por firme y valedero.

Este titulo se tome razon de el en el Libro que Corresponde y se entrigue al interesado para su resguardo y de mas finis. Dado en Monterey a once de Febrero de mil ochocientos cuarenta.

JUAN B. ALVARADO.
MANUEL JIMENO,
Srio.

Queda tomada razon en este despacho en el Libro de a cestos sobre adjudicion de terrenos valdios a fo. 1 vuelta.

JIMENO.

Sello tercero. Dos Reales. Habilitado provisionalmte. por la Aduana Maritima du puerto de Monterey en el Departamento de las Californias de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO.
ANTONIO MA. OSIO.

Revalidado por los anos de 1842 y 1843.

ALVARADO.
ANTONIO MA. OSIO.

[SEAL.] El que subscribe Srio del Gobierno del departmte. de las Californias certifico que el diceno que le accompana sellado y rubricado por la Scria es equal al original que existe en la Sria de mi cargo.

MANL. JIMENO.

Monterey, 14 de Obre. de 1843.

(Here follows map.)

(For map, see original, between pages 19 and 20.)

Sello Tercero. Dos Reales.

Para los anos de mil ochocienta cuarentos y mil ochocientos cuarenta y cinco. Revolidado pe. los anos de 1842 y 1843.

ALVARADO.

Antonio Ma. Osio.

[SEAL.] Por Alcalde 1o. de San Luis Obispo el ciudadano Bicente Cane, Becino del pueblo de San Luis Obispo Ante V. como mas haya lugar, Digo qe. en bertud del titulo y diseno qe. acompana a V. suplico se degne darme posesion juridica que espreso el mencionada titolo gracia qe. Espero de la generondad de V.

BICENTE CANE.

San Luis Obispo, Novembre 5, de 1845.

San Luis Obispo, Novembre 6, de 1845.

Por presentado y admision para el Jueres 16 del entrante prebia situacion de los colindantes sedara verificando las medidadas del terreno que se le ha concedido. Yo el Alcalde 1o. de esta demarcacia hase lo decrete y firme.

JUAQN. ESTRADA.

San Luis Obispo, Decembre 20, de 1845.

Sitose a los colindantes Dn. Juan Nuilson, Dn. Guadalupe Cantua,

Dn. Martin Nolebera, para qe. concurrusen el dia 27 al Rancho de Dn. Bicente Canet yo Alcalde 1a. de esta demarcacion.

Hasi lo decrete y firme.

JUQN. ESTRADA.

San Luis, Decembre 26, de 1845.

Con esta fecha usitaron a Dn. Martin Nolebera, a Dn. Guadalupe Cantua, a Dn. Juan Nuilson, para qe. concurrusen il dia 27 del pusente al Rancho de Dn. Bicente Canet a las ocho de la manana y se asento por diligencia.

JUAQN. ESTRADA.

En el Rancho de San Bernardo a las 27 dias del mis de Decembre de 1845, a las ocho de la manana siendo y et Alcalde 1o. de la demarcacion de San Luis Obispo siendo presente en la casa de habitacion de Sr. Bicente Canet y lleguran a ella Dn. Guadalupe Cantua y Mariano Pacheco y Dn. Pedro Nolivera por la situacion que se les hijo como colindantes y lo hasente por diligencia qe. firme.

JUAQN. ESTRADA.

Incontinente en el mismo parage dia mis y ano siendo presentes Dn. Bicente Canet yo el Alcalde de 1o acompanado de los de mis asistencia hize medir un cordel con el objecto de procider a las medidas de el terreno y al efecto se medio fulmento un cordel de concinenta Baras Castillanos y para su constancia esente esta por diligencia qe. firme con los de asistencia.

JUAQN. ESTRADA.

De Asistensia.
JULIAN ESTRADA.
De Asistensia,
FAUSTINO GARCIA.

Segunda en el mismo parage dia mis y ano yo el Alcalde 1o de la marcarcion de San Luis Hobispo con los de asistencia, Venieno presente uno haber un ponto agremensor dispuese nombre de los concurrientes dos fules medidores cordeleros y al efecto nombre a Dn. Mariano Pacheco y a Dn. Pedro Holibera los canles ha aceptando este encuyo se obligaron bajo el juremento qe. parturon ha disempunarto fulmente asentandole por diligencia qe. firmaron dos de asistencia con mejo y los nombrados.

JUAQUIN ESTRADA.

Asistencia,
JULIAN ESTRADA,
PEDRO OLIVERA.

Asistencia.
FAUSTINO GERCIA,
MARIANO PACHECO.

A continuacion en el mismo parage dia mis y ano a las hocho de la Mariana yo Alcalde 1o. de la demarcacion de San Luis Obispo acompanado de los de me asistencia y concurrentes yo sitados salemos de la habitacion de Dn. Bicente Canet y nos hin caminuino al luyar en

donede sequin su deseno senala su, linderos con Dn. Martin Holibera en ce cual para dur principio a las medida, nos paramos en la boca del arroyo del Morro y de halli tomando los mididores el cordel por sus extremos y afijos se comenso medir por la playa y Costa, rumbo al sur asta llegar a una coma qe. esta pezuda al Cerro Alto qe. esta al pia de las tierras de San Luisito hasta lugar los linderos de Dn. Juan Nuidson y de Dn. Guadalupe Cantua habiendo medido hasta dicha punto ciento concuenta cordeles de concuenta baras hasta dicho. lugar de halli en segunda se tiro el cordel por el arroyo araba por habor con benido ante mi y los testigos de asistencia de qe. repartreson las tierras de siemba en San Luisito y igualmente se conformaron ambos dos el tenir igual derecho en el agua del esparada arroyo y asi es qe. terando el cordel por el arroyo ariva. Rumbo al oriente hasta llegar al camino, real rumbo al sur este asta llegar a la orilla de la lomita y de alli se tiro por la horilla de la loma rumbo al oriente asta habrazar la meta de las terras referidos, de alle se tiro el cordel ael rumbo al oriente asta rena lo meta asta ronde se midaron ciento beinte y cinco seira lando el termino con una pena grande, se continuaron las medidas por la sierra y lomeria en lina paralela rumbo al nortveste asta el harroyo del moro qe. se senalo por termino y lindero con Dn. Martin Olebera y se mederon ciento beinte y cinco y de halle para conclusor los medida, se tiro el cordel todo al arroyo abajo del moro asta donde se commenso a medier y se contaron ciento beinte y cinco cordeles con lo qe. queda comprendido bajo la circumferencia bajo la circumferencio de quinantos beinte y cinco cordeles de a concuenta barras Castillanas concluida, de este modo las referidas medidas y sundo conformis los colindantes tome por lo mano a Dn. Bicente Canet y endvoz clara le deje en nombre de la Nacion Mejicana doy a V. posecion de el terreno qe. se ha medido y responde endo qe. la tomara para manifestar qe. arrendo acquerido el dominio util y directo hera dueno y pr. absoluto de aquil terreno. Escarto la tierra arranco yerbas y tero padra, por los Ciento Bientos con lo qe. se concluyo el acto y firme con los de asistencia y uno de los colindantes.

JULIAN ESTRADA,
JOAQUIN ESTRADA,
FAUSTINO GARCIA,
GUADALUPE CANTUA.

San Luis Obispo, 28 de Deciembre, de 1845, divadvase esta diligencias originales al interesado para testimonio de la hajudicacion de propiedad y el uso que las conbenga.

JUAN. ESTRADA.

San Luis Obispo, 29 de Deciembre, de 1845, atendido el acto precedente se debolvio a Dn. Bicente Canet este espediente en 6 pesos utiles y lo hasente por diligencia.

JOAQN. ESTRADA.

Queda tomado razon de estas diligencias en el libro correspondiente a foyas dos y tres.

JOAQN. ESTRADA.

Foyas dos, tres y cuatro.

Filed in office, September 2d, 1852.

GEORGE FISHER,
Secretary.

"*D.*" *Translation of Title.*

Stamp First—Six Dollars.

Provisionally authorized by the Maritime Custom-House of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO,
(Signed) ANTONIO MARIA OSIO.

[Maritime Custom-House, Monterey.] Juan B. Alvarado, Constitutional Governor of the Department of Californias.

Whereas Don Vicente Canet has, for his own personal benefit and that of his family, petitioned for the land which is bounded by the rancho of citizen Martin Olivera, by the land belonging to San Luisito, by the Sierra and the sea, the proper measure and examinations being previously made as required by laws and regulations, using the faculties which are conferred on me, in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it, by these presents, subject to the approval of the Most Excellent Departmental Junta and to the following conditions, viz. :

1st. He may enclose it without prejudice to the roads, cross-roads and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit; but, within one year, he shall build a house on it and inhabit it.

2d. He shall ask the proper magistrate to give him juridical possession in virtue of this order, for which purpose the boundaries shall be marked out, and he shall place in them, besides the bounds, some fruit or forest trees of a useful character.

3d. The land here mentioned contains one sitio de ganado mayor (one league square, for grazing cattle), a little more or less, as is shown by the map which goes with the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

4th. If he shall contravene these conditions he will lose his right, and it may be denounced by another.

In consequence, I order that this title, being held as firm and valid, note to be made of it in the proper book, and it be delivered to the interested party, for his security and other purpose.

Given at Monterey, the eleventh day of February, one thousand eight hundred and forty.

(Signed) JUAN B. ALVARADO.
(Signed) MANUEL JIMENO.

Note has been taken of this order, in the book of entries of grants of vacant lands, on page 1, over.

(Signed) JIMENO.

Filed in office, March 23, 1852.

GEORGE FISHER,
Secretary.

H.

Translation of Survey and Possession.

To the Alcalde of San Luis Obispo.

Citizen Vicente Canet, resident of the pueblo of San Luis Obispo, respectfully appears before you, and represents that, in virtue of the accompanying title and map, he prays that you will be so good as to give him the juridical possession referred to in the aforesaid title, a favor which he expects from your generosity.

(Signed) VICENTE CANET.

San Luis Obispo, November 5th, 1845.

San Luis Obispo, November 6th, 1845.

Presented and admitted. On Thursday the 6th of next month, the colindantes being previously cited, the possession will be given, verifying the measurements of the land which has been granted. I, the first Alcalde of this demarcation, thus decreed and signed.

(Signed) JOAQUIN ESTRADA.

San Luis Obispo, December 20th, 1845.

Let the colindantes be cited, Don Juan Wilson, Don Guadalupe Cantua, Don Martin Olivera, to appear on the 27th, at the Rancho of Don Vicente Canet. I, the first Alcalde of this demarcation, thus decreed and signed.

(Signed) JOAQUIN ESTRADA.

San Luis Obispo, 26th of December, 1845.

On this day, the colindantes, Don Juan Wilson, Don Martin Olivera, Don Guadalupe Cantua, were cited to appear in the Rancho of Dn. Vicente Canet, at 8 o'clock in the morning of the 27th inst., and it was officially noted.

(Signed) JOAQUIN ESTRADA.

In the Rancho of San Bernardo, on the 27th day of the month of December, 1845, at 8 o'clock in the morning, I, the first Alcalde of

the demarcation of San Luis Obispo, being present in the dwelling-house of Don Vicente Canet, there arrived Don Guadalupe Cantua, Don Mariano Pacheco, and Don Pedro Olivera, summoned as colindantes, and I made official note of it, which I signed.

(Signed) JOAQUIN ESTRADA.

In continuation, in the same place, day, month, and year, Don Vicente Canet being present, I, the first Alcalde, accompanied by those of my asistencia, caused to be measured a rope, for the purpose of proceeding to the measurement of the land, and a rope was faithfully measured fifty Spanish varas long, and in testimony I made official note of it, which I signed with my assisting witnesses.

(Signed) JOAQUIN ESTRADA.

Assisting witnesses.

(Signed) JULIAN ESTRADA,
(Signed) FAUSTINO GARCIA.

Immediately afterwards, in the same place, day, month, and year, the first Alcalde of the demarcation of San Luis Obispo, with those of my assistance, it appearing that there was no official surveyor, proceeded to name from those present Don Mariano Pacheco and Don Pedro Olivera, who, accepting the office, obliged themselves by the oath which they took, to perform the duties faithfully, and I made official note of it, the assisting witnesses signing with me, and those appointed.

(Signed) JOAQUIN ESTRADA.

Assisting witnesses.

(Signed) JULIAN ESTRADA,
(Signed) FAUSTINO GARCIA,
(Signed) PEDRO OLIVERA,
(Signed) MARIANO PACHECO.

In continuation, in the same place, day, month, and year, at 8 o'clock in the morning, I, the first Alcalde of the demarcation of San Luis Obispo, accompanied by those of my assistance, and the persons previously mentioned, left the dwelling-house of Don Vicente Canet, and went to the place where commences the boundary, with Don Martin Olivera, as shown by the map, and placed ourselves at the mouth of the Arroyo del Moro, and the measurers taking the cordel by its extremities, the measurement was commenced along the beach in a southerly direction to a hill which joins the "Cerro Alto," at the foot of which are the lands of San Luisito, being the boundary with Don Juan Wilson and Don Guadalupe Cantua, distant one hundred and fifty cordels of fifty varas each; thence they (Vicente Canet and Guadalupe Cantua) having agreed before me and the assisting witnesses to divide the planting-ground of San Luisito, and also that both should have equal right to the water of the aforesaid arroyo, therefore, the cordel was drawn up the arroyo in an easterly direction to the main road southwest to the foot of the little

hill; thence along the foot of the hill, towards the east, to include the "mesa" of the said lands; thence drawing the cordel easterly to a hill distant one hundred and twenty-five (cordeles), the end of the line being marked with a large rock, the measurement was continued along the sierra and hills in a parallel line (to the one first measured) northwest to the Arroyo del Moro, which was marked as the boundary with Don Martin Olivera, distant one hundred and twenty-five (cordeles); and then, to finish the measurement, the cordel was drawn down the Arroyo del Moro to where the measurement was commenced, distant one hundred and twenty-five cordeles, with which the survey was finished, and the land was included within the boundary of five hundred and twenty-five cordeles of fifty Spanish varas each. Having in this manner completed the measurements, and the colindantes having given their assent, I took by the hand Don Vicente Canet, and in a loud voice said to him, in the name of the Mexican nation, "I give you possession of the land which has been measured;" and he replying, "That he took it in order to show that, having acquired the useful and direct dominion of it, he was owner and absolute lord of that land," dug up earth, pulled up grass, and threw stones towards the four winds; with which the act was finished, and I signed, with those of my assistance, and one of the colindantes.

(Signed) JOAQUIN ESTRADA,
(Signed) GUADALUPE CANTUA.

Assisting witnesses,
(Signed) JUAN ESTRADA,
(Signed) FAUSTINO GARCIA.

San Luis Obispo, Dec. 28th, 1845.

Return these original official papers to the party interested, in testimony of adjudication of ownership, and the use he may think fit.

(Signed) JOAQUIN ESTRADA.

San Luis Obispo, Dec. 29th, 1845.

In compliance with the foregoing decree, this Espediente was delivered to Don Vicente Canet in six pages, and I made official note of it.

(Signed) JOAQUIN ESTRADA.

Note has been made of these official papers on the corresponding book on pages two and three.

(Signed) JOAQUIN ESTRADA.

Pages two, three, and four.

Filed in office, March 23d, 1852.

GEO. FISHER,
Secretary.

Opinion by Comr. Alpheus Felch.

VICENTE CANET
v.
THE UNITED STATES.

For the place called San Bernardo, being one league more or less in quantity.

The claimant presented his petition for the grant to the Prefect of the first district, December 1, 1839. After obtaining information on the subject, a report was made by that officer to the Governor, Juan B. Alvarado, recommending the grant, and an order of concession was thereupon made, under date of February 11, 1840. The approval of the Departamental Assembly was obtained, bearing date May 19, 1840, is given in evidence, and also the record of proceedings in giving juridical possession of the premises to the claimant, which was done on the 27th day of December, 1845.

Two objections have been raised to the confirmation of this claim, to wit, that the proof of possession and the building of a house was insufficient; and, secondly, that the boundaries of the premises were too indefinite, and the quantity of the land included in the judicial survey larger than that called for by the grant. On the first point the proof shows that the claimant has occupied it since 1840, with a house, cattle, and horses, and cultivated considerable portion of the land; he still lives on it with his family. These expressions of the witness are certainly not as definite and explicit as could be desired, but we think the proof must be regarded as sufficient to establish a compliance with the conditions of the grant on that subject.

The only evidence given in the case as to the location, boundaries, or extent of the premises, is found in the official documents abovementioned. The grant describes the land which the petitioner solicited as the land which is bounded by the rancho of Citizen Martin Olivera, by the lands belonging to San Luisito, by the Sierra and the sea, and the land declared to be granted is one square league, a little more or less, as is shown by the map which accompanies the Expediente. The party was required to obtain juridical possession, and the marking out of his boundaries, the surplus of the land to remain the property of the nation. The original official documents relative to the judicial possession are given in evidence. The return shows that the extension lines of the land set apart to satisfy the grant were run and measured, and they are defined by reference to such natural and artificial objects as would seem to be abundantly sufficient to define and separate the premises from the surrounding lands. The line on the east side of the premises seems the only portion of the description which can present any difficulty. This line, as stated in the return, commences at or near the mouth of the Arroyo de San Luisito, and from thence the cordel was drawn up

the Arroyo in an easterly direction to the main road, thence following the main road southerly to the foot of the little hill, thence along the foot of the hill towards the east, to include the mesa of the said land, thence drawing the cordel easterly distant one hundred and twenty-five cordels, where a monument is called for. The objection of the law agent, as to the want of definiteness in the description, and a discrepancy between the quantity of land embraced in the survey, as described in the return, and that conceded, seems to be founded in the supposition that the distance of one hundred and twenty-five cordeles, last mentioned, was intended for the distance run, after making the angle last above described. If this line were continued that distance eastwardly from the foot of the little hill (being so drawn as to include the mesa), it would undoubtedly cause the premises measured and described in the judicial survey to contain a larger quantity of land than that granted. It would also certainly make the description of the land measured incongruous, if not impracticable. But I think the distance of one hundred and twenty-five cordels is not intended for the length of the line between the little hill, above mentioned, and the end of the line at the next angle, which is described in the document, but it embraces more of the survey. The premises measured are nearly in the form of a parallelogram, and the distance of each side is given by itself. The first line measured was along the sea-coast, 150 cordeles; the next measured was the line on which this question arises, and which constitutes the south side of the premises. This is not a straight line, but is run up the Creek of San Luisito eastwardly to a road, thence making an angle, and running along the road to an object called for in the description, thence again to the east at the point of termination. The distance of the several portions of this boundary from angle to angle is not given, but at the end of the description of them the whole measurement of the line from the mouth of the creek to its termination at the hills is given as 125 cordels. That this is the true meaning of the return we think there can be no doubt, and with it the difficulty vanishes. The land thus measured and located is in compact, from having three sides of 125 cordeles each, and the remaining side of 150 cordeles in length. The description and calls for the boundaries are such, with the aid of the map, it would seem to obviate any difficulty in the survey.

The claimant is entitled to a confirmation.

Filed in office, November 22, 1853.

GEORGE FISHER,
Secretary.

Decree.

For the place called San Bernardo, being one square league of land in San Luis Obispo County.

VICENTE CANE
v.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the Commission that the said claim of the petitioner is valid, and it is hereby decreed that the same be confirmed to him. The land, of which confirmation is hereby made, is the place known by the name of San Bernardo, and is situated in San Luis Obispo County, and is the property on which the said claimant resides; bounded and described as follows, to wit: commencing on the line of land known as the land of Martin Olivera, at the mouth of the Arroyo del Moro, and running thence in a southerly direction to a hill which joins the "Cerro Alto," at the foot of which are the lands of San Luisito, being the boundary with Don Juan Wilson and Don Guadalupe Cantua, distant seven thousand five hundred varas, thence up the Arroyo de San Luisito by the middle of the stream, in an easterly direction to the main road, thence following the main road southwesterly to the foot of the little hill, thence along the foot of the hill towards the east, to include the "mesa" of the said lands, and thence easterly to a hill distant six thousand two hundred and fifty varas by the line as above described, from the point of first intersection with said arroyo, the eastern termination of said line being marked by a large rock; thence running along the sierra and hills in a line parallel to that first above described, northwest six thousand two hundred and fifty varas, to the Arroyo del Moro, which is the boundary with Don Martin Olivera; thence down the Arroyo del Moro six thousand two hundred and fifty varas, to the place of beginning, at the mouth of the same, containing one square league, more or less; reference for more particular description thereof to be had to the original grant of the same, and the report of the acts of judicial possession, and the map attached to the same, which are on file in this case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, November 22, 1853.

GEORGE FISHER,
Secretary.

Office of the Board of Commissioners to Ascertain and Settle the Private Land Claims in the State of California.

I, George Fisher, Secretary of the Board of Commissioners to ascertain and settle the private land claims in the State of California,

do hereby certify that the foregoing thirty-three pages, numbered from 1 to 33, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said Board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 123 on the docket of the said Board, wherein Vicente Cane is the claimant against the United States for the place known by the name of "San Bernardo."

In testimony whereof I hereunto set my hand and affix my private [G. F.] seal (not having a seal of office), at San Francisco, California, this twenty-second day of August, A. D. 1854, and of the Independence of the United States of America the seventy-ninth.

GEORGE FISHER,
Secretary.

United States District Court, Southern District of California,
Clerk's Office, Los Angeles.

I, Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, both inclusive, contain a full, true, and correct copy of Transcript No. 123, filed in this office, wherein Vicente Cane is appellee and the United States are appellants for San Bernardo.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Los Angeles, California, [L. S.] the 20th day of December, A. D. 1855, and of the Independence of the United States of America the eightieth.

C. E. CARR,
Clerk.

United States District Court, Southern District of California,
Clerk's Office, Los Angeles.

VICENTE CANE, Appellee,
v.
THE UNITED STATES, Appellants. } Docket No. 41. Transcript No. 123.

Be it remembered, that on the 26th day of August, A. D. 1854, in the District Court of the United States for the Southern District of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the Commissioners to ascertain and settle the private land claims in the State of California, when sitting as a Board, in the case wherein Vicente Cane is the claimant against the United States for the place named San Bernardo, was received and filed, and docketed with No. 41, and is as follows, to wit:

(Vide page 1.)

Los Angeles, January 10th, 1855.

In Case No. 41, Vicente Cane for San Bernardo, the notice of appeal from the Attorney-General of the United States was filed.

(Vide page 3.)

Los Angeles, August 13th, 1855.

In same Case, petition of the United States for review was filed.

(Vide page 3.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, Sept. 24th, 1855.

In same Case, the answer of Vicente Cane was filed.

(Vide page 9.)

Los Angeles, Sept. 26th, 1855.

In the same Case, the opinion of the Court was delivered confirming the claim, and the following decree was entered.

(Vide page 10.)

Los Angeles, Oct. 18th, 1855.

In same Case, on motion of the Attorney for the United States, it was ordered by the Court, that an appeal be granted the United States to the Supreme Court of the United States.

(Vide page 11.)

Appeal Notice.

Office of the Attorney-General of the United States,
Washington, 30th November, 1854.

VICENTE CANE
v.
THE UNITED STATES. } 123.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office, on the 18th day of August, 1854, the appeal in the District Court of the United States for the Southern District of California will be prosecuted by the United States.

C. CUSHING,
Attorney-General.

Filed, January 10th, 1855.
(Signed)

C. E. CARR,
Clerk.

Petition of the United States for Review.

In the District Court of the United States for the Southern District of California.

Los Angeles County, State of California.

VICENTE CANE *ads.* THE UNITED STATES. } No. 41 (Transcript No. 123.)

To the Honorable Isaac S. K. Ogier, Judge of the District Court of the United States for the Southern District of California.

The petition of Pacificus Ord (of Los Angeles County), Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit: on or about the 23d day of March, A.D. 1852, Vicente Cane presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called San Bernardo, in the County of San Luis Obispo, in the words and figures following, viz.:

"The petitioner, Vicente Cane, respectfully shows: That on the 1st day of December, A.D. 1839, he applied through the Prefect of the 1st District of California, for the tract of land known by the name of San Bernardo; situate in the then partido of San Luis Obispo, and being from a league to a league and a half square; that said application was approved by the Prefect and other local authorities. That on the 11th day of February, A.D. 1840, Juan B. Alvarado, Governor of California, by virtue of authority in him vested, granted to the petitioner the said tract of land with the boundaries described in the said grant, and set forth in the respective map. That on the 19th day of May, A.D. 1840, the Departmental Junta of California approved the said grant in due form, all of which is shown in the Espediente, an exact copy of which is submitted herewith, marked 'A,' with a translation marked 'B;' as also a copy of the title and map given him, marked 'C,' with a translation marked 'D.'

"And the petitioner further shows, that on the 27th day of December, A. D. 1845, the said tract of land was duly surveyed, and the juridical possession of it given to the petitioner by the proper authority, a copy of which juridical act is submitted herewith, marked 'E,' with a translation marked 'F.'

"That the said land has not been surveyed by the Surveyor-General of the United States, but that it was surveyed by the proper authority, at the time of giving the juridical possession, and has been surveyed since by the Surveyor of the County of San Luis Obispo, and that its boundaries are definite and well known.

"That the petitioner for some 13 years has been and now is in the quiet, peaceful and undisputed possession, occupation, and cultivation of the said tract of land.

"That he knows of no conflicting claim.

"The petitioner relies for confirmation of title upon the original papers, copies of which are submitted herewith; upon the documents and minutes in the archives, now under the charge of the Surveyor-General, and upon such other and further proofs as he may be advised are necessary.

"Wherefore, he prays the Commissioners to confirm to him the said tract of land." Your petitioner further represents, that thereafter, to wit, on the 22d day of November, A. D. 1853, the said Commissioners confirmed, by final decree, the said claim of the said Vicente Cané, in the words and figures following, to wit:

"In this case on hearing the proofs and allegations it is adjudged by the Commission, that the said claim of the petitioner is valid, and it is therefore hereby decreed that the same be confirmed to him. The land of which confirmation is hereby made, is the place known by the name of San Bernardo, and is situated in San Luis Obispo County, and is the property on which the said claimant resides; bounded and described as follows, to wit: commencing in the line of land known as the land of Martin Olivera, at the mouth of the Arroyo del Morro, and running thence in a southerly direction to a hill which joins the 'Cerro Alto,' at the foot of which are the lands of San Luisito, being the boundary with Don Juan Wilson, and Don Gaudalupe Cantua, distant seven thousand five hundred varas; thence up the Arroyo de San Luisito by the middle of the stream in an easterly direction to the main road, thence following the main road southwesterly to the foot of the little hill, thence along the foot of the hill towards the east to include the 'mesa' of the said lands, and thence easterly to a hill distant six thousand two hundred and fifty varas by the line, as above-described, from the point of first intersection with said Arroyo, the eastern termination of said line being marked by a large rock; thence running along the Sierra and hills in a line parallel to that first above-described, northwest, six thousand two hundred and fifty varas to the Arroyo del Morro, which is the boundary with Don Martin Olivera, thence down the Arroyo del Morro six thousand two hundred and fifty varas to the place of beginning at the mouth of the same—containing one square league, more or less, reference for more particular description thereof to be had to the original grant of the same, and the report of the acts of juridical possession and the map attached to the same, which are on file in this case.

"ALPHEUS FELCH,
"THOMPSON CAMPBELL,
"R. AUG. THOMPSON,
} Commissioners.

"Filed in office, Nov. 22d, 1853.

"GEO. FISHER,
"Secretary."

That thereafter, to wit, on the 26th day of August, A.D. 1854, a duly certified transcript of the said decree, and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 41 (Transcript No. 123), reference to which it is prayed may be had and made a part of this petition. That on the 18th day of August, A.D. 1854, the Honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said Commissioners in said cause (No. 123) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A.D. 1855, the said Attorney-General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said District Court for the Southern District of California, that the appeal, in said cause of Vicente Cane *v.* The United States, from the decision of the said Commissioners to ascertain and settle the private land claims in the State of California, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land claimed as aforesaid, is within the jurisdiction of this Honorable Court. And your petitioner further represents and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now in appeal from said Commissioners to this Honorable Court.

And your petitioner further represents that the said claim is invalid, and the said decree erroneous, on the following grounds.

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimant, to said Commissioners, of said date. And he further denies that any grant for said land was ever made, as alleged in said petition. And he denies further, that the said claimant has shown any, or sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Governor Alvarado was made in violation of the fourth article of the colonization law of Mexico, of the 18th day of August, A.D. 1824, in this; that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast, and there is no evidence shown by claimant, that the Supreme General Executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues

of the sea-coast. And it is denied, that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by, and in the possession of, the Missions of the territory of Upper California; and it was held and occupied particularly by the Mission of San Luis Obispo, and could not therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico, of the 21st day of November, A. D. 1828.

V. That the said claimant shows no definitive grant for the said land claimed by him.

VI. That the said alleged grant of said Governor Alvarado, of said date, does not sufficiently describe the land claimed, so that it can be identified and surveyed; and it is vague and uncertain.

VII. That the survey and juridical possession alleged to have been made by the proper authority on the 27th day of December, A. D. 1845, was not made in conformity with the said alleged grant and map referred to therein, nor according to the ordinance or law; and it is vague and indefinite.

VIII. That there is no evidence that Joaquin Estrada was First Alcalde of San Luis Obispo, on the said 27th day of December, A. D. 1845, and that he then had lawful authority to make the survey and give juridical possession to said Vicente Cane of said land; and it is denied that he was First Alcalde of said place at said time, and had then lawful authority to perform said acts of survey and possession.

IX. That there is no sufficient evidence that the said Vicente Cane built a house upon the said land within one year from the date of the said alleged grant; and it is denied that the said claimant built a house upon the said tract of land alleged to have been granted and claimed as aforesaid, within one year from the date of the said grant, and that it was occupied. And no sufficient proof having been made by said claimant of the allegations of his said petition, or in support of his said claim, filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said Commissioners upon the grounds aforesaid. And the said claimant having no valid right or title, derived from the Spanish or Mexican Governments, to the said land claimed by him, as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to, the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the Republic of Mexico, dated at the City of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said Pacificus Ord, Attorney of the United States for the Southern District of California, for and in behalf of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the Act of Congress, entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said Vicente Cane may be served with a copy of this petition; and that this Honorable Court will review the said decision or final decree of confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Vicente Cane for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid. And all such other orders, judgments, or decrees as may be just, with costs and general relief.

P. ORD,
Attorney of the U. States for the Southern District of California.

Filed Aug. 13, 1855.
(Signed) C. E. CARR,
Clerk.

Answer.

In the United States District Court for the Southern District of California.

THE UNITED STATES, Appellants,
v.
VICENTE CANE, Appellee. } No. 41.

Answer of Appellee.

Vicente Cane, appellee, appears by his attorneys, and, for answer to the petition of the United States, filed herein, says: That his title to the land called "San Bernardo," as set forth and described in his petition to the United States Board of Commissioners, and in the documentary and other evidence in this case, is a good and valid title, and he prays this Honorable Court to affirm the decision of the Board of Commissioners, and decree his title to be valid.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellee.

Los Angeles, September 22, 1855.

Filed September 24th, 1855.
(Signed) C. E. CARR,
Clerk.
By JOHN H. ROSS,
Deputy.

Decree.

District Court of the United States—Southern District of California.

VICENTE CANE, Appellee,
ads.
THE UNITED STATES, Appellants. } No. 41. "San Bernardo."

This cause, coming on to be heard at a special term of this Court, on appeal from the Board of Commissioners to ascertain and settle private land claims in the State of California, under an Act of Congress approved March 3d, 1851, on a transcript of the proceedings and decision, and papers and evidence on which said decision was founded, and it appearing to the Court that the transcript has been duly filed according to law, and counsel, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of the said Commissioners be affirmed, and that the claim of the said Vicente Cane to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed, to the extent of one square league, provided the quantity hereby confirmed be contained within the limits called for in said grant, and in case there be a less quantity, then that less quantity is hereby confirmed to the said appellee.

(Signed) ISAAC S. K. OGIER,
U. S. Dist. Judge, for the Southern District of California.

Filed September 26, 1855.
(Signed) C. E. CARR,
Clerk.

Appeal Notice.

In the United States District Court for the Southern District of California, Special Term.

Los Angeles, Sept. 1855.

VICENTE CANE, Appee.
ads.
THE UNITED STATES, Appts. } No. 41. Transcript No. 123.

On motion of P. Ord, Attorney of the United States for the Southern District of California, it is ordered by the Court that an appeal be granted the United States to the Supreme Court of the United States from the judgment of this Court against the United States, in the above-entitled cause, rendered on or about the 25th day of September, A. D. 1855.

(Signed) P. ORD,
U. S. District Attorney.

Filed October 18th, 1855.
(Signed) C. E. CARR,
Clerk.
By J. H. ROSS,
Deputy.

United States District Court, Southern District of California.

Clerk's Office, Los Angeles.

I, Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing eleven pages, numbered from 1 to 11, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said Court, of the documentary evidence and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 41 on the docket of the said Court, wherein Vicente Cane is appellee, and the United States are appellants, for San Bernardo.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said Court at Los Angeles, California, this twentieth day of December, A. D. 1855, and of the Independence of the United States of America the eightieth.

C. E. CARR,
Clerk.